Abdul Halim Mohyiddin v Malaysian Institute of Accountants (MIA)

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R1–25–70 OF 1999
KC VOHRAH J
7 FEBRUARY 2001

Civil Procedure *— Appeal — Appeal against decision of disciplinary committee to a statutory body to High Court — Appellant filed appeal by way of originating motion — Whether originating motion the proper procedure — Whether application to appeal should be dismissed — Accountants Act 1967 s 21(2)*

The respondent is a statutory body having disciplinary jurisdiction over registered members, which includes the appellant. The appellant was found guilty by the disciplinary committee of the respondent of a breach of a by-law, was admonished and ordered to pay costs to the respondent. Under the relevant law, the appellant may appeal to the High Court within a period of twenty days after the communication of the decision. The appellant thus filed an appeal by way of originating motion under O 55 and 13 of the Rules of the High Court 1980 ('RHC'), which the respondent objected to on grounds that it was not the proper procedure and should be dismissed.

Held, appeal dismissed with costs:

(1) Section 21(2) of the Accountants Act 1967 (Act 94) ('the Act') is straightforward in its language and purport. The words are, 'The procedure governing such appeals to the High Court shall be the same as for appeals to the High Court from a decision of a Subordinate Court in civil matters'. There are no qualifying words 'with such modifications as the circumstances may require' which appeared in s 77(2) of the Employment Act 1955. The court is of the view that the word 'same' used in the provisions makes it clear beyond doubt that the procedure governing appeals under s 21(2) of the Act shall be identical to the procedure for appeals to the High Court from decisions of a subordinate court in civil matters. In other words, O 49 of the Subordinate Court Rules 1980 ('the SCR') governing the procedure of appeals to the High Court from decisions of subordinate courts is the applicable provision in regard to appeals under s 21(1) of the Act (see p 502D–F).

(2) The SCR were made under s 4 of the Subordinate Court Rules Act 1955. Bearing in mind what Hashim Yeop Sani SCJ had stated in Syarikat Maltaco Sdn Bhd v Eow Teh Yu & Ors [1985] 2 MLJ 149 in relation to the words 'subject to any rules of court made under the Courts of Judicature Act 1964' appearing at the commencement of s 4 of the Subordinate Courts Rules Act 1955, the court holds that these words do not have any effect on O 49 of the SCR because of the clear words 'unless otherwise provided by

any written law' appearing at the commencement of O 55 r 13(2) of the RHC which were made under the Courts of Judicature Act 1964 (see p 502F–G).

[**Bahasa Malaysia summary**

Defendan merupakan sebuah badan berkanun yang mempunyai bidang kuasa disiplin ke atas ahli-ahli yang berdaftar, termasuk perayu. Perayu telah didapati bersalah oleh jawatankuasa disiplin responden oleh kerana melanggar undang-undang kecil dan telah diberi amaran dan diarahkan supaya membayar kos kepada defendan. Menurut undang-undang yang berkenaan, pearyu boleh merayu kepada Mahkamah Tinggi dalam tempoh masa 20 hari setelah keputusan disampaikan kepadanya. Perayu telah memfail rayuan melalui usul pemula dibawah A 55 dan 13 Kaedah-kaedah Mahkamah Tinggi 1980 ('KMT tersebut'), di mana responden telah membuat bantahan bahawa prosedur yang salah telah digunakan dan patut ditolak.

Diputuskan, menolak rayuan dengan kos:

(1) Bahasa dan maksud s 21(2) Akta Akauntan 1967 (Akta 94) ('Akta tersebut') adalah jelas. Perkataan-perkataan yang digunakan adalah 'The procedure governing such appeals to the High Court shall be the same as appeals to the High Court from a decision of a Subordinate Court in civil matters'. Tiada perkataan kelayakan 'with such modifications as the circumstances may require' seperti di dalam s 77(2) Akta Pekerjaan 1955. Mahkamah berpendapat bahawa perkataan 'same' yang digunakan dalam peruntukan tersebut menjadikannya jelas melampaui keraguan bahawa prosedur yang digunakan dibawah s 21(2) Akta tersebut adalah serupa dengan prosedur yang digunakan untuk membuat rayuan kepada Mahkamah Tinggi dari mahkamah rendah dalam perkara sivil. Dalam perkataan lain, A 49 Kaedah-kaedah Mahkamah Rendah 1980 ('KMR tersebut') yang digunakan dalam prosedur untuk merayu kepada Mahkamah Tinggi dari mahkamah rendah boleh digunakan untuk membuat rayuan di bawah s 21(1) Akta tersebut (lihat ms 502D–F).

(2) KMR tersebut telah digubal di bawah s 4 Akta Kaedah Mahkamah Rendah 1955. Memandangkan apa yang dikatakan oleh Hashim Yeop Sani HMA dalam *Syarikat Maltaco Sdn Bhd v Eow Teh Yu & Ors* [1985] 2 MLJ 149 berhubung dengan perkataan-perkataan 'subject to any rules of court made under the Courts of Judicature Act 1964' yang terdapat di permulaan s 4 Akta Kaedah Mahkamah Rendah 1955, mahkamah ini berpendapat bahawa perkataan-perkataan tersebut tidak mempengaruhi A 49 KMR tersebut oleh kerana perkataan-perkataan 'unless otherwise provided by any written law' yang

jelas yang terdapat di permulaan A 55 k 13(2) KMTtersebut yang digubal di bawah Akta Mahkamah Kehakiman 1964 (lihat ms 502F–G).

Notes

For cases on appeals generally, see 2(1) Mallal's Digest (4th Ed, 1998 Reissue) paras 369–964.

Cases referred to

Abaco Estate v Selvarajah [1985] 2 MLJ 149 (refd)
Syarikat Maltaco Sdn Bhd v Eow Teh Yu & Ors [1985] 2 MLJ 19 (folld)
Yong Yoke Sung & Ors v Sungei Way Estate [1966] 1 MLJ 175 (refd)

Legislation referred to

Accountants Act 1967 (Act 94) ss 3, 21(2)
Courts of Judicature Act 1964
Employment Act 1955 ss 69, 77(2)
Rules of the High Court 1980 O 55 r 13, (2)
Subordinate Court Rules 1980 O 49, r 2(3)
Subordinate Court Rules Act 1955 s 4

R Vinayaga Raj (*Skrine & Co*) for the appellant.
P Anandarajah (*Zul Rafique & Partners*) for the respondent.

KC Vohrah J. : The respondent is a statutory body established under s 3 of the Accountants Act 1967 (Act 94) ('the Act') having disciplinary jurisdiction over members who are registered in accordance with the Act. The appellant is registered in accordance with the Act.

The disciplinary committee of the respondent made a decision against the appellant on 27 May 1999. The decision was communicated to him on 28 May 1999. He was found guilty of a breach of by law 18.1 of the By Laws (On professional Conduct And Ethics). He was admonished and ordered to pay RM5,000 to the respondent as costs and expenses of and incidental to the inquiry.

Under s 21(1) of the Act, any member aggrieved by any decision of the disciplinary committee may, within a period of 20 days after the decision has been communicated to him, appeal to the High Court. The procedure governing such appeals is expressed thus:

> 21 (1)…
> (2) The procedure governing such appeals to the High Court shall be the same as for appeals to the High Court from decisions of a Subordinate Court in civil matters.

This appeal filed in the High Court is by way of originating motion under O 55 r 13 of the Rules of the High Court 1980 ('the RHC'). The respondent has objected to the originating motion as a vehicle for the appeal. Counsel

for the respondent submitted that the mandatory and express provision in s 21(2) of the Act requires that the appeal procedure to be 'the same as for appeals to the High Court from decisions of a subordinate court in civil matters' meaning that O 49 of the Subordinate Court Rules 1980 ('the SCR') which governs appeals from subordinate courts to the High Court must be resorted to. The further argument is that failure to do so in the light of the Supreme Court case of *Syarikat Maltaco Sdn Bhd v Eow Teh Yu & Ors* [1985] 2 MLJ 19 which considered and approved the High Court case of *Abaco Estate v Selvarajah* [1985] 2 MLJ 149 means that this appeal is not properly before the court and that it should be dismissed.

The appellant argues, to put it briefly, that O 55 r 13 of the RHC governs appeals from 'persons or body of persons' which includes a body of persons, corporate or incorporate and the respondent, being a statutory body, a corporate body, falls under the class of persons specified under O 55 r 13 of the RHC and that O 55 r 13 of the RHC prevails over O 49 of the SCR and this court has jurisdiction to hear the appeal.

In the case relied upon by the respondent, *Syarikat Maltaco Sdn Bhd*, the issue was whether the appeal to the High Court from the decision of the Assistant Director of Labour should have been filed within 14 days as stated in O 49 r 2(3) of the SCR or within one month as stated in O 55 r 13 of the RHC. The appeal before the High Court was dismissed and the matter came up before the Supreme Court on appeal.

The Supreme Court interpreted s 77(2) of the Employment Act 1955 ('the EA') which states that 'subject to any rules made under s 4 of the Subordinate Court Rules Act 1955, the procedure in an appeal shall be the procedure in a civil appeal from a sessions court with such modifications as the circumstances may require.

The Supreme Court held that the procedure of appeal against the decision of the Director-General under s 69 of the EA shall be the procedure as provided by O 49 r 2 of the SCR and not O 55 r 13 of the RHC. The Supreme Court approved the reasoning in the case of *Abaco Estate* which had held the same view and which had distinguished the judgment of Pike CJ in the case of *Yong Yoke Sung & Ors v Sungei Way Estate* [1966] 1 MLJ 175, a Federal Court decision which had held that the appeal in such a case should have been by way of motion under O 59 r 13 of the RHC.

Hashim Yeop A Sani FCJ in *Syarikat Maltaco* at 20 remarked that Wan Hamzah FJ had crystallized his thinking in *Abaco Estate* and that in that case he had considered *Yong Yoke Sung* and in effect had ruled that the decision should be understood in the context of the time it was made. Hashim Yeop A Sanu FCJ thought that this was a correct approach to and evaluation of the decision having regard to the state of the law then. His Lordship then reproduced the relevant portion of the judgment of Wan Hamzah FJ. It is a long passage and because of the close reasoning therein the whole passage has to be reproduced,

> The decision of the Federal Court in that case was made when the Rule Committee Ordinance, 1955 in its old form was in force. At that time the

Rules of Supreme Court 1957 were also in force and had not been replaced by the Rules of the High Court 1980. As pointed out by Pike CJ in that case, s 77(2) of the Employment Ordinance 1955 at that time should be read as follows:

> 'Subject to any rules made under s 4 of the Rule Committee Ordinance 1955 the procedure in an appeal to the High Court shall be the procedure in a civil appeal from a Sessions Court with such modifications as the circumstances may require.'

In his judgment Pike CJ stated:

> 'Section 4 of the Rule Committee Ordinance 1948 has been repealed and replaced by s 4 of the Rule Committee Ordinance 1955. In each section there was provision for the making of rules for 'regulating and prescribing the procedure on appeals from any court or person (s) to the court of Appeal or the High Court…'

Pike CJ was referring to s 4(b) of the Rule Committee Ordinance 1955, the relevant parts of which read as follows:

> 4 It shall be the duty of the Rule Committee from time to time and as occasion may require to make rules for the following purposes—
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> (a) …
>
> (b) or regulating and prescribing the procedure in proceedings by way of appeal from any court or persons to the Court of Appeal or the High Court, the time within which any such appeal may be brought, and…'

At that time s 4 of the Rule Committee Ordinance 1955 provided for the function of one and the same Rule Committee for making rules for regulating the procedure and the practice to be followed in the High Court and in Subordinate Courts respectively. It also provided for the function of the same Rule Committee to make rules for prescribing the procedure in proceedings by way of appeal to the High Court not only from the decisions of subordinate courts but also from the decisions of persons like the decision of Penolong Pengarah Buruh in the present case. Thus the Rules of the Supreme Court 1957 were made by that Rule Committee (established under s 3) pursuant to the powers conferred by s 4 of the Rule Committee Ordinance 1955. Therefore the Rules of the Supreme Court 1957 were rules referred to in the opening words of s 77(2) of the Employment Ordinance, ie the words 'Subject to any rules made under s 4 of the Rule Committee Ordinance.' I believe that if they were not so, the Federal Court would not have held that O 59 r 13 of the Rules of the Supreme Court 1957 applied in that case. That this was so is shown by the fact that Pike CJ took pains to explain that the reference to s 4 of the Rule Committee Ordinance 1948 contained in the opening words of s 77(2) of the Employment Ordinance must be construed as a reference to s 4 of the Rule Committee Ordinance 1955. Pike CJ also stressed that the evening words of s 77(2) were not mere surplusage, on the ground that a perfectly sensible meaning could be given to them.

Hashim Yeop A Sani SCJ after citing at the passage concluded,

> In our opinion the words 'subject to any rules made under s 4 of the Subordinate Courts Rules Act 1955' appearing at the commencement of s 77(2) of the Employment Act are not surplusage. If it was not clear before, it is clear now that with those words the intention of the Legislature is to abide by the procedure laid down by the Subordinate Courts Rules.

> The direction given in s 77(2) was that the procedure in an appeal to the High Court shall be the procedure in a civil appeal from the Sessions Court. Having regard to s 4(b) of the Subordinate Courts Rules Act 1955 the time within which any such appeal may be brought is clearly part of the procedure. Therefore the 'modification' referred to in s 77(2) are only modifications as to form and not as to time. We also do not think that the words 'subject to any rules of court made under the Courts of Judicature Act 1964' appearing at the commencement of s 4 of the Subordinate Courts Rules Act have any effect on O 49 r 2(3) of the Subordinate Courts Rules 1980 because of the clear words 'unless otherwise provided by any written law' appearing at the commencement of O55 r 13(2) of the High Court Rules 1980.
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> We are therefore satisfied that it is clearly the intention of the Legislature that the procedure of appeal against the decision of the Director-General under s 69 of the Act shall be the procedure in a civil appeal from the Sessions Court as provided by O 49 r 2 of the Subordinate Court Rules 1980 and not O 55 r 13 of the High Court Rules 1980.

In our case, s 21(2) of the Act is straightforward in its language and purport. The words are, 'The procedure governing such appeals to the High Court shall be the *same* as for appeals to the High Court from a decision of a subordinate court in civil matters.' (Emphasis added.) There are no qualifying words 'with such modifications as the circumstances may require' which appeared in s 77(2) of the EA. I think the word 'same' used in the provisions makes it clear beyond doubt that the procedure governing appeals under s 21(2) of the Act shall be identical to the procedure for appeals to the High Court from decisions of a subordinate court in civil matters. In other words O 49 of the SCR governing the procedure of appeals to the High Court from decisions of subordinate courts is the applicable provision with regard to appeals under s 21(2) of the Act.

One other matter, the SCR was made under s 4 of the Subordinate Courts Rules Act 1955. Bearing in mind what Hashim Yeop Sani SCJ had stated in *Syarikat Maltaco* (earlier quoted) in relation to the words 'subject to any rules of court made under the Courts of Judicature Act 1964' appearing at the commencement of s 4 of the Subordinate Courts Rules Act 1955, I hold that these words do not have any effect on O 49 of the SCR because of the clear words 'unless otherwise provided by any written law' appearing at the commencement of O 55 r 13(2) of the RHC which were made under the Courts of Judicature Act 1964.

My attention has been drawn to a recent High Court case, ie UP No 2–25–1999 decided on 21 September 2000, where it was held that s 21(2) of the Act only covers the manner of hearing of the court proceeding in an appeal against the decision of the Disciplinary Committee of the Malaysian Institute of Accountants. It was held that the words 'procedure governing such appeals' in the provision 'is referring to determining an appeal and not the manner in which the filing is made' and '(this) is so as there is no guideline in the provisions of the Act as to how the hearing should be conducted in this court.

A I have to respectfully disagree with the decision in that case in view of the clear and express terms of s 21(2) of the Act and the decision in *Maltaco* as I had discussed earlier.

In the circumstances, the only avenue procedurally open to the appellant for the appeal is by way of O 49 of the SCR which was not done in this case. Accordingly, and reluctantly I say this, the appeal is not brought properly before the court and it has to be dismissed with costs.

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